

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.150 of 2018

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Suresh Prasad Yadav, Son of Late Girish Dev Prasad Yadav, Resident of Village Gamhariya Khurd, P.O. - Gamhariya Khurd, Ward No. 11, P.S. Adapur, District East Champaran

... .. Petitioner

Versus

Vinay Kumar Agarwal Alias Vinod Kumar Agarwal, Resident of Village Kachurbari (Shyampur Bazar) P.O. - Adapur, P.S. Adapur, District East Champaran

... .. Respondent

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate
Mr. Sunil Kumar No. III, Advocate
Mr. Bijendra Kumar, Advocate
For the Respondent/s : Mr. Ashok Kumar, Advocate
Mr. Sushil Kumar Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date : 05-04-2019

Heard learned counsel for the parties.

2. The sole petitioner Suresh Prasad Yadav is stranger to the Eviction Suit No. 01 of 2008 as well as stranger to the suit property. The petitioner put resistance before the Execution Court in execution of the decree for delivery of possession passed in the aforesaid suit which was turned down by the impugned order dated 10.09.2018 by the learned Munsif at Raxaul.

3. The point for consideration, in this civil revision application, is whether there is any scheme in the Code of Civil Procedure (in short "C.P.C."), especially, under Order 21 of the C.P.C. permitting a stranger to the suit as well as the suit property to resist the decree from being executed.



4. A brief fact of this case is that sole opposite party Vinay Kumar Agarwal @ Vinod Kumar Agarwal brought Eviction Suit No. 01 of 2008 against Phool Hassan for ejection, on the ground of personal necessity, from suit property mentioned in Schedule-II of the plaint. The plaintiff has asserted in the suit that the suit property is ancestral property of the plaintiff and was allotted to the share of the plaintiff in family partition thereafter the plaintiff was in possession of the property mentioned in Schedule-I of the plaint. Schedule-1 contains reference of Khata No. 2, Plot No. 243, Area 1 Katha 1½ dhur bounded as North-Krishna Kumar Maskara, South-share of Radha Devi, East-Road, West-Road situated in village Kachurbari (Shyampur Bazar), P.S. Adapur, District East Champaran vide Jamindari No. 18 of 2015. Further case of the plaintiff is that defendant of the suit was tenant in a shop measuring 10' x 10' detailed in Schedule-II of the plaint on monthly rental of Rs.500/-. The description of the shop is measuring 10' x 10' standing on Plot No. 243 and bounded as North-Krishna Kumar Maskara and Raj Kumar Maskara, South-Vinod Kumar Agarwal (the plaintiff), East-Rasta, West-Vinod Kumar Agarwal. After decree of the suit, the plaintiff-decree-holder filed Execution Case No. 02 of 2013. The petitioner herein filed Misc. Case No. 01 of 2018 in the same execution case under Order 21, Rule 97 of the C.P.C. for the reason that when Nazir of the Court went to deliver the possession of the



suit property to the plaintiff on 24.12.2017, the petitioner resisted for the reason that possession of the premise of the petitioner was being taken over by Nazir. The petitioner contended that in the same Plot No. 243, the petitioner had purchased 5 Katha 3 Kanwa through registered sale deed dated 30.05.2017 from Raj Kumar Maskara. The learned Munsif while refusing the prayer of the petitioner has recorded that just to defeat the fruit of the decree to the decree-holder, the petition was filed. The learned court below further recorded that the area purchased by the petitioner was quite different from the area which was subject matter of the decree.

5. Learned counsel for the petitioner submits that since the petitioner had purchased a portion in the same plot and Nazir was to affect delivery of possession on the purchased portion of the petitioner, the petitioner had genuine cause to resist the execution of the decree and the learned court below in arbitrary manner has rejected the prayer of the petitioner. Reliance has been placed on the judgment of the Hon'ble Supreme Court which are already referred in the impugned order and that would be discussed later on.

6. Learned counsel for the respondent contends that, in fact, the petitioner, was a witness of the tenant in eviction suit and in collusion with the tenant, wants to delay the eviction proceeding in spite of the fact that decree has attained finality and without any basis for any claim over the suit property, the petitioner put forward a



fictitious case before the Execution Court which has rightly been turned down.

7. The petitioner has produced a photo copy of the sale deed dated 30.05.2017 at Annexure-8 executed by Raj Kumar Maskara in favour of petitioner-Suresh Prasad Yadav whereby Raj Kumar Maskara sold away 1 dhur, 11 Kanwa in Plot No. 243 with following boundary; North-Niz Mokir, South-the purchaser, East-Bibi Niyat Bano, West-Niz Mokir (the executant). By the same deed, 3½ dhur in Plot No. 243 was transferred as Lot No. 2 containing a room of 10' x 10' with boundary North-the Executant of the deed, South-Late Ram Awatar Prasad (ancestral of the plaintiff), East-Road and West-Bablu Chaurasiya. Apparently, the petitioner is purchaser in the northern boundary of the suit property referred in the plaint from Raj Kumar Maskara who is already mentioned in the northern boundary of the suit land. Therefore, it is apparent that the suit property is quite different property than the property claimed by the petitioner.

8. The relevant provisions of Order 21 of the C.P.C. are being reproduced below:-

“Rule 97. Resistance or obstruction to possession of immovable property.--- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application



to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Rule 99. Dispossession by decree-holder or purchaser.--- (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Rule 101. Question to be determined.--- All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

Rule 102. Rules not applicable to transferee pendente lite.--- Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.



Rule 103. Orders to be treated as decrees.---Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.”

9. In *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal and another* reported in **AIR 1997 SC 856** and relied by the learned counsel for the petitioner, the Hon’ble Supreme Court held that it cannot be said that the only remedy available to the stranger to the decree for possession who has resisted its execution, to have his claim adjudicated is the one under R. 99 of O. 21 after he has lost possession to the decree-holder and that he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings.

10. In *Brahmdeo Chaudhary’s* case (supra), the claim of the stranger was on the subject matter of the decree whereas in this case, the petitioner's claim is on a quite different subject matter though lying by the side (northern boundary) of the suit property.

11. Likewise, in *N.S.S. Narayana Sarma & Ors. vs. M/s. Goldstone Exports P. Ltd. & Ors.* reported in 2002(1) PLJR (SC) 71, the stranger to the decree had claimed over the subject matter of the decree, by transfer etc.

12. Evidently, the aforesaid cases are not relevant for this purpose for the apparent reason that the petitioner has no interest in



the suit property rather he had acquired interest in an adjoining portion of the same plot.

13. In the result, it is held that the petitioner is not only stranger to the suit, rather stranger to the suit property having no interest therein, hence, the petitioner has no locus standi to resist the delivery of possession in favour of the decree-holder. Accordingly, this civil revision has got no merit and stands dismissed with cost of Rs.10,000/- (rupees ten thousand) payable to the decree-holder within two months, failing which the Execution Court shall recover the same according to law.

14. Accordingly, this civil revision application stands dismissed.

(Birendra Kumar, J)

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AFR/NAFR	A.F.R
CAV DATE	29.03.2019
Uploading Date	05.04.2019
Transmission Date	05.04.2019

